



Somaliland International Patriotic Action

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## Open Forum Discussion Summary:

### POLICY BRIEFING PAPER No.1/2023

#### Legality of respect of Somalia's sovereignty

##### 1. Introduction:

SIPA's Open Forum held online discussion on 03/05/2023, the discussion focused the question of the 'Legality of the respect of Somalia's sovereignty', which has been reiterated in the international domain. The discussion took a total time of 120 minutes from 10:35pm to 00:35am local time.

The total participants participated online discussion was 44 participants with diversity of professionals and backgrounds including lawyers, legal researchers, independent writers, individuals with extensive professional work experiences with the international organizations, security and policy analysts, human rights activist and other experts in the fields of public policy, public international law.

The online discussion was held under rule of SIPA's Open Forum with considerable reviews and verifications of the contribution of the participants. Special consideration is given the text its correctness and transparent information in an impartial manner.

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Edited by: SIPA Team

## 2. Background

Somalia's display and existence over the period before 1991 was a situation involving substitution of State and sovereignty. That forced Somaliland to disclose the reality existing on Somalia, after Somalia crossed the redline and unlawfully attempted to object the decision that the State of Somaliland is making by virtue of its power over its territory.

Somalia's possession and control of the territory of Somaliland over the period before 1991 was by means of use of force and a situation involving illegal occupation which was precluded in 1991 into a permanent situation with no hope that Somalia will recover the territory it has murdered over 85,000 innocent unarmed civilians of mainly children, women and elderly people and deliberately destroyed private property 99% to ruins in 1991.

Therefore, it became inevitable for Somaliland to break silence and disclose the reality existing on Somalia. Since Somalia has crossed the redline and blindly continues to claim the territory of Somaliland that has Somalia lost by means of war three decades ago in 1991.

Somalia was exercising British Treaty Series No. 44 (1960) without consent of the pre-existing independent State of Somaliland. This Policy Paper is briefly disclosing that the reality existing on the respect of the sovereignty and political independence of Somalia, which is an obligation without legal substance. Therefore, international organizations trying to maintain obligations created by resolutions cannot shield Somalia's non-sovereignty status.

The resolutions and decisions of international organizations will not create obligations under international law. Thus, respect of Somalia's sovereignty and political independence is a decision expressed outside the existing international legal system.

## 3. Legality of Somalia's sovereignty and political independence

Over the period Somalia has been claiming obligations created by resolutions and decisions of international organizations. This Policy Briefing Paper intends to illustrate the legality of the respect of the sovereignty, territorial integrity and political independence of Somalia, which is an obligation without legal substance. Therefore, international organizations that are trying to maintain obligations created by resolutions are now to face the reality existing on Somalia.

The work of the International Law Commission has determined that there was no such an independent government of Somalia. The following are some of the evidences showing that Somalia never achieved political independence on 1<sup>st</sup> July 1960: -

### 3.1. Somalia's none-political independence:

The fact that Somalia did not achieve political independence on 1<sup>st</sup> July 1960, is contained in the Friendly Treaty concluded between Italy and Somalia on 1<sup>st</sup> July 1960, paragraph 2 of Somalia UN Treaty No.11, stipulates "*upon the accession of Somalia to independence*" the statement containing Somalia's Treaty No.11, a treaty concluded on 1<sup>st</sup> July 1960 constitutes the evidence showing that Somalia did not achieve independence on 1<sup>st</sup> July 1960, when this treaty was concluded between Italy and Somalia through exchange of letters. The Treaty of

Friendship (with Exchange of Notes) concluded between Italy and Somalia, Mogadiscio, 1 July 1960. For the original Italian text see *Diritto Internazionale*, vol. XVI (1962), pp. 440-442. English text provided by the United Kingdom Government appears in United Nations, *Materials on Succession of States* (op. cit.), pp.169-170.

There is no treaty filed, recorded and registered with the Secretariat of the United Nations, which contains provision stipulating the existence of political independence that Somalia has achieved on 1<sup>st</sup> July 1960. The Trust territory of Somalia chosen to freely associate with the five days old independent State of Somaliland on 1<sup>st</sup> July 1960. Somalia displayed in Mogadishu at later date the flag already displayed in Hargeisa on 26 June 1960 by the independent State of Somaliland. The practice was that the independent State of Somaliland has extended its jurisdiction to the Trust territory of Somalia without any resistance.

### 3.2. Somalia's none-political independence:

The fact that Somalia did not achieve political independence on 1<sup>st</sup> July 1960, is in the text of Mr. Paolo Contini, the chairman of the Consultative Commission for Integration, at the same time UN Legal Adviser stationed in Mogadishu, who stated "*that the independence of Somalia has coincided with the union of Somaliland and Somalia on 1<sup>st</sup> July 1960, and therefore, there was never an independent Government of Somalia on 1<sup>st</sup> July 1960.*" The statement of Mr. Paolo Contini, the chair of the Consultative Commission for Integration is the primary source of legal matters. The legal view expressed by Mr. Paolo Contini constitute the evidence showing that the Trust territory of Somalia have freely associated with the five days old independent State of Somaliland on 1<sup>st</sup> July 1960. (Mr. Paolo Contini, the Somali Republic: An Experiment in Legal Integration, 1969, p.9.).

### 3.3. Somalia's none-political independence:

The result of the official legal interpretation of paragraph 1 of Article 4 of the Somali Republic Law No.5 of 31<sup>st</sup> January 1961, by the Special Rapporteur of the International Law Commission, their legal investigation on the existence of claims of "*All rights lawfully vested in or obligations lawfully incurred by the independent Governments of Somaliland and Somalia*" in paragraph 1 of Article 4, the International Law Commission which is the organ of the United Nations mandated progressive development and codification of the United Nations international law have *determined that "there was never as such an independent Government of Somalia"*. See Mr. Mohammed Bedjaoui, Special Rapporteur - the Eighth report on succession of States in respect of matters other than treaties, draft articles on succession to State property, with commentaries (continued), A/CN.4/292 of 1976, vol. II (1). See Yearbook of International Law Commission, of 1976, vol. II (1), pp.21-101), stated "*However, in as much as there was never an independent Government of Somalia, this article in effect makes the Somali Republic the successor of Somaliland only.*" The result of the legal interpretation in paragraph 1 of Article 4 of Law No.5 of 31<sup>st</sup> January 1961, the Special Rapporteur did not find an independent Government Somalia in the records of the United Nations.

### **3.4. Somalia's none-political independence:**

The evidence of the extinctions of Somaliland and Somalia's existences as separate independent States on 31<sup>st</sup> January 1961, which was made retroactive from 1<sup>st</sup> July 1960, in paragraph 1 of Article 4 of Law No.5 of 31<sup>st</sup> January 1961, have established the existing peremptory norm of general international law (*jus cogens*), *a norm accepted and recognized by the international community of States as whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*". Therefore, Somalia's accession to membership in the United Nations on 20 September 1960, and Somalia's display and existence over the period before 1991 and later after August 1<sup>st</sup> 2012 both are conflicting with the existing peremptory norm of general international law (*jus cogens*). Certain States that have interest on Somalia are misleading international community to a mission impossible situation.

### **3.5. Somalia's none-political independence:**

The United Nations Legislative Series, Materials on Succession of States in Respect of Matters Other Than Treaties, contains the list of cases of States that achieved independence after the Second World War, which the name of Somalia is registered number 39, amongst those States that registered their treaties with the United Nations. Somalia is registered as those States that achieved independence after the Second WW, which Somalia is registered British Treaty Series No. 44 (1960), Commander 1101. Came into force on 26 June 1960 between Somaliland and United Kingdom. This document contains the evidence showing the substitution of the independent State of Somaliland to the name of Somalia, while Somalia freely associated with the independent State of Somaliland on 1<sup>st</sup> July 1960.

### **3.6. Somalia's none-political independence:**

The legal evidence available is showing that Somalia was using the political independence of the State of Somaliland established by the British Treaty Series No. 44 (1960), Commander 1101. Came into force on 26 June 1960", the sovereignty of the State of Somaliland proves the reality existing on Somalia's none-accession of political independence on 1<sup>st</sup> July 1960, because there is reason that Somalia has to use the sovereignty of the State of Somaliland if Somalia achieved political independence on 1<sup>st</sup> July 1960.

### **3.7. Somalia's none-political independence:**

The other Somalia's none-political independence evidence is the fact that Somalia did not claim as a successor State of a territory. Therefore, since Somalia did not achieve political independence on 1<sup>st</sup> July 1960, Somalia was not a successor State of any border on 1<sup>st</sup> July 1960. In addition, there is no transfer of sovereignty or jurisdiction between Somaliland and Somalia. Therefore, Somalia's press releases and claims stating that Somaliland agreement with Taiwan and the MOU signed between Somaliland and Ethiopia in January 2024 are violating the sovereignty and political independence of Somalia is obligation without legal substance. Those signing joint declarations with Somalia with the statement of commitment

#### 4. Conclusions

In conclusions Somalia has no sovereignty and political independence, those rights and obligations that Somalia has acquired by illegal means will not have legal validity after 1991. Those African States that are making commitment on the respect of the sovereignty and political independence of Somalia is conflicting with the existing international legal system.

The respect of the sovereignty and political independence of Somalia is obligation without legal substance. Therefore, international organizations and States that are engaging respect of sovereignty and political independence of Somalia are part of the problem. The respect of the sovereignty and political independence of Somalia do not reflect the existing international legal system and international law.

Immediately upon preclusion of Somalia's wrongful act in 1991 by the independent people of Somaliland, Somalia's display and existence over the period before 1991 will not have legal validity from the territory of Somaliland.

#### 5. Recommendations

##### **The Government of Somaliland:**

- The Government of Somaliland should manifest sovereignty existing over its territory on 26 June 1960, the mere legal regime on the legality of Somaliland's State formation.
- The Government of Somaliland should not recognize Somalia as a legitimate State nor sovereignty State.
- The Government of Somaliland should not receive diplomats that delivered their credential letters to Mogadishu administration.

##### **The Government of Somalia:**

- The Government of Somalia should stop its false claim of sovereignty over the territory of the State of Somaliland.
- The Government of Somalia should present the source of its claim of sovereignty and political independence to the public.
- The Government of Somalia should end its false State representation against the Government of Somaliland.

##### **United Nations:**

- United Nations Security Council should suspend its decision resolution 141 (1960) recommending to the General Assembly that the Republic of Somalia to be admitted to membership in the United Nations on 5 July 1960. Somalia was not sovereignty State at the time that Security Council recommended.
- United Nations Security Council should stop reaffirming its respect of Somalia's sovereignty and political independence which is obligation without legal substance and breach against the existing international legal system.

- United Nations General Assembly should expel Somalia from its unlawful accession to membership in the United Nations on 20 September 1960, which Somalia did not obtain two-thirds votes in Article 18(2) of the UN Charter.
- Somalia's obligations created by resolutions will not create obligations in the international law.

### **International Community:**

- International community should consider as lawful means those rights and obligations that Somalia has acquired by illegal means over the period before 1991.

### **About SIPA**

The Somaliland International Patriotic Action (SIPA) is an independent, nonpartisan, nonprofit policy, democracy, human rights and development organizations established to strengthen the capacity of the people of Somaliland by injecting knowledge, technical and administrative support to enable to manage issues affecting their status and position in the world. SIPA Action is focusing popularization of the existence of Somaliland and the fundamental rights of the people of Somaliland.

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